
**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

**INTERSTATE ELECTRIC TRANSMISSION SYSTEM
ELECTRIC RELIABILITY ISSUES
NOTICE OF INQUIRY**

**COMMENTS OF THE
NEW YORK STATE RELIABILITY COUNCIL**

In response to the Department of Energy's ("DOE") request for comments on whether to initiate a rulemaking to impose mandatory electric reliability standards ("NOI"),¹ the New York State Reliability Council ("NYSRC") respectfully submits these comments. The NYSRC appreciates the opportunity to comment on the questions posed by DOE and urges DOE to carefully consider the comments reflected herein prior to taking further action with respect to this issue.

I. Background

The NYSRC was approved by FERC in June of 1998 as part of the restructuring of the electricity industry in New York State.² Under this restructuring, the Member Systems of the New York Power Pool ("NYPP") turned over to the newly created New York Independent System Operator, Inc. ("ISO") operational control of the bulk power transmission facilities in New York State. The restructuring established competitive wholesale electricity markets in New York State. Under concurrent state policies, retail access to competitive electricity suppliers was

¹ Department of Energy, Notice of Inquiry on Imposition of Mandatory Electric Reliability Standards, 65 Fed. Reg. 69,753 (November 20, 2000).

² Central Hudson Gas & Electric Corp., et al., 83 FERC ¶ 61,352 (1998) ("June 30 Order"); Central Hudson & Electric Corp., et al., 86 FERC ¶ 61,062 (1999) ("January 27 Order"); Central Hudson & Electric Corp., et al., 88 FERC ¶ 61,138 (1999) ("July 29 Order").

provided to end use consumers, and the investor owned utilities were encouraged to divest most of their generating assets.

The mission of the NYSRC is to promote and preserve the reliability of electric service in the New York Control Area by developing, maintaining and updating Reliability Rules. The ISO is obligated to comply with all Reliability Rules, including Local Reliability Rules. The ISO also is obligated to maintain the safety and short-term reliability of the New York State Power System and administer the ISO tariffs in accordance with the Reliability Rules. (ISO/NYSRC Agreement §§ 3.1 and 3.2). The NYSRC's mission also includes monitoring compliance with the Reliability Rules by working in consultation with the ISO, including when necessary, seeking compliance through the dispute resolution procedure contained in the ISO/NYSRC Agreement. (ISO/NYSRC Agreement § 4.2).

The Reliability Rules adopted by the NYSRC are based on the reliability standards established or imposed by Northeast Power Coordinating Council ("NPCC"), North American Electric Reliability Council ("NERC"), Federal Energy Regulatory Commission ("FERC"), New York State Department of Public Service ("New York PSC"), and the Nuclear Regulatory Commission ("NRC") and any other government agency with jurisdiction over the reliability of the New York State power system. While the Reliability Rules must be consistent with NERC and NPCC standards, they include more stringent and more detailed criteria and Local Reliability Rules in order to address the special reliability needs of the New York Control Area, particularly the special needs of New York City and Long Island. The Reliability Rules initially adopted by the NYSRC were the existing rules of the NYPP. (See NYSRC Agreement § 3.01)

II. The NYSRC As a Model For Mandatory Electric Reliability Standards Under A Competitive Industry Structure

The creation of the NYSRC, to some extent, anticipated the concerns that underlie the DOE's proposed rulemaking. Prior to industry restructuring, the vertically integrated utilities in New York, who are subject to FERC and New York PSC jurisdiction, could be depended upon to

conform to general reliability standards adopted by the NERC and NPCC, as well as more stringent and detailed reliability standards developed by the NYPP and the New York PSC to meet the special reliability needs of the New York Control Area. With the restructuring and deregulation of the electricity markets, including the transfer of operational control of the NYPP Member Systems' transmission assets to the ISO and the deregulation of the electricity markets, the need for enforceable reliability standards became apparent. The NYSRC was established to ensure that the reliability standards for electricity service in the New York Control Area are maintained. While a number of parties expressed concern that the NYSRC would exercise undue influence over the ISO or would inappropriately interfere with commercial transactions, based on the NYSRC's limited and clearly defined responsibilities, FERC concluded that these concerns were unwarranted.

As a result of agreements among the NYSRC, the NYPP Member Systems and the ISO, and related provisions in the ISO Agreement and the ISO tariffs, the Reliability Rules adopted by the NYSRC, which include NERC and NPCC standards, became binding on the ISO. The ISO was given the responsibility to implement these reliability standards and apply them to all market participants through the ISO tariffs.

As DOE considers whether mandatory reliability standards should be established in the restructured electricity industry, it may wish to consider how that objective was achieved in the New York Control Area through the creation of the NYSRC and the adoption of various agreements and related tariff provisions approved by FERC.

III. Responses to Questions Posed by DOE

1. *Is the existing arrangement of voluntary compliance with industry reliability rules sufficient to ensure reliability of the bulk power transmission system? If not, why not, and has reliability been jeopardized by violations of the existing bulk power reliability standards?*

The NYSRC agrees that, in a restructured and competitive electricity market, both the transmission provider, including a Regional Transmission Organization ("RTO"), and all market participants should be subject to mandatory reliability rules. While all parties support maintaining reliability in concept, commercial interests very often are at odds with the maintenance of reliability. The imposition of a reliability standard frequently will adversely affect specific commercial transactions. Pressure by market participants to maximize commercial transactions could result in a weakening of reliability standards, or less than adequate enforcement of reliability standards. It also is important to separate the responsibility for promulgating reliability standards from the RTO's responsibility to comply with reliability standards, ensure compliance by market participants, and maintain short-term system reliability. In the New York Control Area, the NYSRC has the responsibility to promulgate appropriate reliability standards, separate from the ISO's responsibility to operate the transmission system reliably, ensure market participant compliance with reliability standards, and administer competitive electricity markets.

2. *What can FERC do under existing authorities to address reliability concerns?*

As noted above, through FERC-approved agreements and tariffs, the ISO is obligated to comply with Reliability Rules adopted by the NYSRC and to ensure compliance by market participants through the ISO tariffs. Thus, in the context of the approval of RTOs, FERC can use its existing authority to address reliability concerns. It is important to note, however, that currently NERC and NPCC are working to develop mechanisms that may achieve mandatory

compliance with reliability standards. The NYSRC, which is a member of NPCC, supports these efforts. It is respectfully recommended, therefore, that the DOE and FERC await the outcome of these efforts, prior to taking action in this area.

3. *If FERC has the authority to establish and enforce reliability standards, may FERC delegate such authority to a self-regulating reliability organization? Should it do so?*

As noted above, through FERC-approved agreements and tariff provisions, the ISO and market participants have become obligated to comply with Reliability Rules adopted by the NYSRC. Should the ISO or any market participant believe that a Reliability Rule interferes with FERC requirements, including the requirement for open transmission access and non-discriminatory treatment of all market participants, the ISO or a market participant may petition FERC for relief. Thus, in the case of the NYSRC and the ISO, FERC has authorized entities to promulgate and implement reliability standards that are binding on market participants, subject to a party's right to petition FERC. Any such authorization should ensure that regional and sub-regional reliability organizations, such as the NYSRC, have the ability to address the special reliability needs within their regions or sub-regions. As noted above, however, it would be preferable for DOE and FERC to await the outcome of current efforts by NERC and NPCC to develop mechanisms that may achieve mandatory compliance with reliability standards prior to taking any action.

4. *Are there elements in CECA, or other electric reliability legislative language, which can, with or without modification, be used in a rulemaking?*

The NYSRC does not have a view as to whether the adoption of any specific legislative language would be appropriate. It is essential, however, that any action in this area by DOE or FERC recognize the pre-existence of the NYSRC and allow the NYSRC to continue to exercise its responsibilities, as approved by FERC. Any proposed action by DOE or FERC that would undermine the current structure or responsibilities of the NYSRC will be vigorously opposed by

the NYSRC and other parties concerned with maintaining reliability in the New York Control Area.

5. *What should the relationship be between Regional Transmission Organizations, as advanced in FERC Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. para. 31,089 (2000), and an Electric Reliability Organization as proposed in CECA?*

An RTO should be obligated to comply with reliability standards adopted by a FERC-approved reliability organization, subject to appeal to FERC of any reliability standard that the RTO believes interferes with its responsibilities under Order No. 2000. In addition, if the FERC has approved a sub-regional reliability organization, such as the NYSRC, the RTO should be subject to the reliability standards of that organization as well.

6. *How should the responsibilities and roles of FERC and the States be addressed in a rulemaking?*

The state interest and responsibility with respect to reliability must be acknowledged and respected. The NYSRC satisfies that requirement through the adoption of Reliability Rules that incorporate, not only NERC and NPCC standards, but also reliability standards needed to meet the specific reliability needs of the New York Control Area. These special reliability standards were developed over many years under the NYPP pursuant to New York PSC direction or approval. It also should be noted that the New York PSC is represented on the NYSRC's Executive Committee as a non-voting member and actively participates in NYSRC activities.

IV. Conclusion

The NYSRC appreciates the opportunity to submit these comments. Please contact the undersigned if the NYSRC can be of any further assistance.

Sincerely,

Paul L. Gioia
Of Counsel to the NYSRC

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